THE MADRAS LAW JOURNAL

I] JANUARY [1970

MARCH OF LAW, 1969.

INTRODUCTION.

In a changing society the law cannot remain stationary. The virtues of law are also its defects. No formulae are final and the expositions of the past do not always adequately measure the opposing forces of the next. Law must be stable, yet, it cannot stand still. If it is desirable that law must not change too quickly it is even more desirable that it should not be prevented from changing at all. The underlying principles of justice do not change but the complex pettern of life that is never static requires a fresher outlook and a timely and vigorous moulding of old principles to suit new conditions, ideas and ideals. It is true that the Courts do not legislate but it is not true that they do not mould and make the law in the process of their interpretation. There is no doubt an anxiety not to impair judicial consistency but the Judge by his generalising and transmutation of his experience into law performs a genuine act of creation. There is much wisdom in the observation that " when the ghosts of the past stand in the path of justice clanking their mediaeval chains, the proper course for the Judge is to pass through them unhindered.[1]" Thus law marches on steadily broadening from precedent to precedent. During the year under review about thirty decision of the Supreme Court have appeared in the coloumns of this Journal besides almost all the important decisions of our High Court. An attempt is made hereunder to refer to the decisions so rendered under some of the familiar and fairly important titles of law.

COURTS : THEIR JURISDICTION AND POWERS.

In *Vira Reddi* v. *Kistamma*[2], it is pointed out, that the jurisdiction of the Bench and the scope of an enquiry in an appeal under clause 15 of the Letters Patent (Madras) against the judgment of a single Judge of the High Court rendered in the exercise of his appellate jurisdiction (in a first appeal) will be the same as the jurisdiction of the Bench and the scope of an enquiry in an appeal from the decision of a single Judge of the High Court disposing of original suits: that is to say, the Bench will have undoubted jurisdiction to examine the facts and the evidence and reach its own findings thereon. It is further pointed out that though the powers under clause 15 are wide and unqualified, the Bench would be reluctant and would not lightly interfere with the findings of the single Judge of the High Court. *Seshadri* v. *Vasanta Pai*[3], lays down that an election petition is neither an action at law nor a suit in equity, but only a special proceeding and that under the provisions of the Representation of the People Act the High Court can exercise all the powers under the Civil Procedure Code and can follow all the procedure as far as may be applicable to the trial of civil suits in the trial of election petitions, so much so, in the absence of any prohibition contained in the law, the Court has the power to summon a Court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. *Yusuf Sheriff* v. *R.T.A., Chingleput*[4], holds that when delay is in respect of a matter of which the High Court has directed speedy

1. L.R. (1943) A.C. 32, 62.
2. (1969) 1 M.L.J. 366.
3. (1969) 2 An.W.R. (S.C.) 50 : (1969) 2 S.C.J. 208 : (1969) 2 M.L.J. (S.C.) 50.
4. (1969) 2 M.L.J. 264.

disposal things may take a grave turn, that men's allegiance for law would be fundamentally shaken if there is legitimate room for suspicion that the delay is motivated, that conduct reasonably giving rise to such suspicion is a most fatal and dangerous obstruction of justice and that such conduct in a given case may amount to contempt of Court. *M. H. Abdul Rahman & Co.* v. *Deputy C.T.O., Vaniyambadi*[1], states that no officer of the Government however high or exalted he may be, can take upon himself the responsibility of judging the correctness or validity of an order of any Court, that if he honestly and *bona fide* feels that the order is erroneous or requires any modification, the only remedy open to him is to approach that Court by way of review or modification or a higher Court by way of appeal or otherwise, that apart from that, it is not open to him to take upon himself the responsibility of judging the order and take any action contrary to or inconsistent with the same on the basis of his own judgment, and that if once an officer is permitted or allowed to do any such thing, that will mean the end of the very principle of Rule of Law on the basis of which the entire fabric of our democratic society has been constructed.

Constitutional Law.

In *T.S. Baliah* v. *T.S. Rangachari, I.T.O.*[2], the Supreme Court points out that there would be no repeal of Acts by implication, unless the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment. *S. J. G. Chand* v. *Secretary, M. C. G. & K. Merchants Workers Union*[3], expresses the view that a Court can look into the history of a legislation, not for the purpose of construing the Act but for the limited purpose of ascertaining the background, the conditions and circumstances which led to its passing, the mischief it was intended to prevent and the remedy it furnished to prevent the mischief; that the Statement of Objects and Reasons also can be legitimately used for ascertaining the object which the Legislature had in mind, though not for construing the Act; and that even where an Act deals comprehensively with a particular subject matter, the Legislature can surely provide that it shall apply to particular persons or groups of persons or to specified institutions only. In *Balammal* v. *State of Madras*[4], the Supreme Court points out that it will not interfere with decisions in appeals relating to the valuation of lands compulsorily acquired unless there is something to show that the judgment cannot be supported by reason of a wrong principle or because some important point affecting valuation has been overlooked or misapplied, and that sub-clause (2) of clause (6) of the Schedule to the Madras City Improvement Trust Act of 1950 in so far as it deprives the owners of land compulsorily acquired of the statutory addition to the market value of the land under section 23 (2) of the Land Acquisition Act is discriminatory and so void as violative of Article 14 of the Constitution. In *Udai Ram Sharma* v. *Union of India*[5], the Supreme Court lays down that whenever an amending Act is passed there is bound to be some difference in treatment between transactions which have already taken place and those which are to take place in the future, that that by itself will not attract the operation of Article 14, that even with respect to transactions which may be completed in the future, a reasonable classification will not be struck down, that the Legislature by enacting the Validation Act XIII of 1967 has sought to improve upon the existing provision of the Land Acquisition Act and there is no discriminatory treatment which should be struck down as violative of Article 14 and that Article 14 does not strike at a differentiation caused by the enactment of a law between transactions governed thereby and those which are not so governed *Mohambaram* v. *Jayavelu*[6], decides that when considerations extraneous to the suit

1. (1969) 2 M.L.J. 168 : (1969) M.L.J. (Crl.) 620.
2. (1969) 2 M.L.J. (S.C.) 9 : (1969) 2 An.W.R. (S.C.) 9 : 72 I.T.R. 787 : (1969) M.L.J. (Crl.) 547 : (1969) 1 S.C.J. 890 : (1969) 1 I.T.J. 732.
3. (1969) 2 An.W.R. (S.C.) 38 : (1969) 2 S.C.J. 181 : (1969) 2 M.L.J. (S.C.) 38.
4. (1969) 1 M.L.J. (S.C.) 21 : (1969) 1 An. W.R. (S.C.) 21 : (1969) 1 S.C.J. 209.
5. (1969) 1 An.W.R. (S.C.) 51 : (1969) 1 S.C.J. 423 : (1969) 1 M.L.J. (S.C.) 51.
6. (1969) 1 M.L.J. 261 : (1969) M.L.J. (Crl.) 217.

ability of a person for appointment are taken into account in making an appointment there is an abuse of discretionary power, and the other aspirants to the office would have been left out of consideration on totally irrelevant grounds and Articles 14 and 16 would be violated. *Natarajan* v. *Director-General of Posts and Telegraphs*[1], holds that in the selection of Inspectors to two distinct cadres by promotion on the basis of a departmental examination the combining of the two cardes as one unit for the purpose of selecting scheduled caste candidates and allotment of two out of three posts to the scheduled caste candidates in one cadre is violative of the fundamental right of the petitioner a forward community candidate who stood second in the examination and is repugnant to Articles 14 and 16. *Venkatesalu* v. *Union of India*[2], lays down that a change in the seniority of a Government servant made as a result of a circular retrospectively not based on any criterion relevant to the fixation of seniority should be held to be hit by both the Articles 14 and 16. *State of Madras* v. *Vanamamalai Mutt*[3], expresses the view that law in this country should speak the same language in emergency as in normal times and Courts even in periods of emergency have to be alert to see that any coercive action is justified in law, that restraints on the guaranteed freedom of the subject can only be under law and not by any executive ukase and that clauses 4 and 5 of the Madras Paddy and Rice (Declaration and Requisitioning of Stocks) Order has to be struck down as violating Articles 14 and 19 of the Constitution. In *State of Gujarat* v. *Shantilal Mangaldas*[4], the Supreme Court makes it clear that there is no reason for holding that compensation which is guaranteed by Article 31 (2) for compulsory acquisiion must be paid in terms of money alone, that after the amendment in clause (2) of Article 31 by the Constitution (Fourth Amendment) Act, 1955 adequacy of compensation fixed by the Legislature or awarded according to the principles specified by the Legislature for determination is not justiciable, that the right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose, that what is fixed as compensation by statute or the application of the principles specified for determination of compensation is guaranteed, that that does not mean however that something fixed or determined by the application of specified principles which is illusory or can in no sense be regarded as compensation must be upheld by the Courts since to do so would be to grant a charter of arbitrariness and permit a device to defeat the constitutional guarantee, that principles may be challenged on the ground that they are irrelevant to the determination of compensation but not the plea that what is awarded as a result of those principles is not just or fair compensation, that a challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable, that under the Bombay Town Planning Act, 1955, the Legislature has specified the principles for the determination of compensation which has to be paid which cannot be said to be irrelevant nor can the compensation determined be regarded as illusory, and that the validity of an Act relating to acquisition and requisition cannot be questioned on the ground that it offends Article 19·(1) (*f*) or on the ground that it operates harshly in a given case. *Sri Navaneethaswaraswami Devasthanam* v. *State of Madras*[5] makes it clear that Article 31-A is an exception to the general principles embodied in Article 31; that the second proviso to the Article figures as an exception to the exception, *i.e.*, though market value is not the criterion for purposes of assessment of compensation for estates taken over under the enactments which have been included in the Ninth Schedule of the Constitution by the Seventeenth Amendment Act, in the case of lands within the ceiling limit, applicable to a person by any law for the time being in force, it can only be acquired on payment of compensation at a rate which shall not be less than the market value; that the purpose is obviously to protect small ryots or

1. (1969) 2 M.L.J. 552.
2. (1969) 2 M.L.J. 364.
3. (1969) 2 M.L.J. 324 : I.L.R. (1969) 1 Mad. 243.
4. (1969) 2 M.L.J. (S.C.) 59 : (1969) 2 S.C.J. 322 : (1969) 2 An.W.R. (S.C.) 59.
5. (1969) 2 M.L.J. 113.

quondam landholders in possession of lands within the ceiling under the law prevailing in the particular area, which is under his direct cultivation; that for the application of the second proviso, among other things two things are essential, namely (i) acquisition within the meaning of Article 31 and (ii) of lands within the ceiling limit; that the effect of applying section 52 of the Madras Public Trusts Act, 1961, is that the lands exempted will be free from the operation of the provisions of that Act and that once that happens, the lands to which the Act becomes inapplicable because of the exemption, are entirely outside the scope of any ceiling and the second proviso to Article 31-A, will have no application. In *Muthia Chettiar* v. *Shanmugham Chettiar*[1], the Supreme Court lays down that where the plea that the suit was bad for non-joinder of the other partners of the concerned firm was not taken in the Courts below, it is not open to the appellant to make the point before the Supreme Court for the first time. *Subramanian* v. *Speaker of the Madras Legislative Assembly*[2], makes it clear that Article 194 (3) vests the Speaker of the State Legislature, empowered by a resolution of the Legislature, with the right to call upon a third party, to show cause why he should not be held to have committed a breach of the privilege of the Legislature by way of contempt; that though it is true that Article 194 (3) was transitional or transitory in character and that enacted laws were expected to be made in this respect as early as covenient it is very difficult to see how any theory of automatic lapse or lapse due to inaction can apply to Article 194 (3) in its relation to the State Legislature; that the argument that the powers, privileges and immunities thus secured by Article 194 (3) do not form a law at all in a jurisdic sense is unsubstantial ; that this corpus is a part of the Constitution itself; that it cannot be contended that this law is amorphous and unascertainable, though it may be true that certain sources of law, comprising precedents are not easily available; that where therefore a notice is issued by the Speaker calling upon a third party to show cause why he should not be held to have committed contempt of the Legislative Assembly a writ of prohibition restraining the Speaker from proceeding further cannot be issued on the ground of absence of an *ab initio* jurisdiction; that the argument that this is essentially a criminal jurisdiction is inapplicable to that stage of the proceedings which is a stage of assumption of jurisdiction and nothing more and that it is impossible that at that stage there is any procedure whatever which impinges on Article 20 (1) or 21 of the Constitution. *Lakshminarayanan* v. *Maruthappa Nainar*[3], holds that Article 226 confers powers on the High Courts in language of the widest amplitude to issue to any person or authority, including in appropriate cases any Government, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them not only for enforcement of fundamental rights but also for any other purpose, and that the Article does not in terms provide as to who can apply for writs or orders thereunder. *Thiruvenkadam* v. *Muthu Chettiar*[4], states that for purposes of invoking the writ jurisdiction a person aggrieved is one who apart from the general interest which he may have as a member of the public has a special and particular interest in the subject-matter supposed to be wrongly decided. *Lakshminarayanan* v. *Maruthappa Nainar*[3], makes it clear that the interest of the applicant need not be proprietary but as a claim for *certiorari* implies a grievance there must be a grievance that the Court would take cognisance of; that having regard particularly to the amplitude of the power of the Court that may be invoked under Article 226, a scrutiny of the *locus standi* of the applicant for *certiorari* is clearly necessary to keep off meddlesome interlopers and professional litigants invoking the jurisdiction of the Court in matters that do not in the least concern them; that when *certiorari* is sought the Court looks for some personal interest of the applicant in the matter, something more substantial and related to the applicant than due observance of law by the authorities; that a person who is denied a permit or one who is wrongfully deprived or

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1. (1969) 2 An.W.R. (S.C.) 28 : (1969) 2 S.C.J. 105 : (1969) 2 M.L.J. (S.C.) 28.
2. (1969) 1 M.L.J. 163 : I.L.R. (1968) 3 Mad. 377.
3. (1969) 2 M.L.J. 79 (F.B.).
4. (1969) 1 M.L.J. 143.

refused something to which he is duly entitled, or on whom a legal burden is cast are obvious cases; that the requirement as to the standing of an applicant for *certiorari* cannot be circumscribed by any narrow definition; that the right to apply for relief deeming himself aggrieved is one thing, making out a case for the issue of *certiorari* is a different thing depending on the judicial scrutiny of the record in relation to and his establishing one or other of the recognised grounds for quashing; that the necessity for judicial scrutiny when a person comes to Court complaining against an act of commission or omission of an administrative authority regulating trade, business or occupation under law which prejudicially affects him springs from our concept of the supremacy of the rule of law and the authority of the Court to determine the legality of the act; that the fact that the licensing law vests the authority with some discretion in the matter does not take the discretion of the authority out of judicial scrutiny; that when an authority is vested with discretion he must direct his attention to matters which he is bound to consider and he must exclude from consideration matters irrelevant to what he has to consider; that if he does not obey these rules, then he oversteps the bounds of his jurisdiction; that in matters that could vitally affect citizens in their normal avocations trade and business there is no such thing as absolute discretion in administrative authorities and that an existing rice mill owner who has objected to the installation of a fresh rice mill in the locality and contends that he has been prejudicially affected by the grant of permit for the installation of a fresh rice mill has sufficient interest to give him *locus standi* to make an application for *certiorari* under Article 226. *Mohambaram Jayavelu*[1] holds that though the making of an appointment is an executive or administrative act of the Government, Courts can intervene even with such act where no absolute discretion is vested in the Government for making the appointment; that if people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not proper for the guidance of their discretion then in the eye of law they have not exercised that discretion; that while Courts will not interfere with the choice of an individual with reference to an appointment made in the due exercise of its discretion by the Government without shutting out of consideration the claims of others for the post, Courts will certainly stand guard and are bound to do so in a democracy against flagrant abuse of powers on the simple and sound principle that the Constitution cannot have intended powers to be abused beyond what might be called the inevitable area where opinions may legitimately differ and that where the Government is not withholding from a petitioner a post to which he is entitled no *mandamus* can issue but that a writ on *certiorari* will issue quashing the appointment made without complying with the relevant rules. *Venkatasubbu* v. *Director of Enforcement*[2] expresses the view that if in relation to the concerned proceedings a party approaches the High Court for the issue of a writ of *certiorari* with a record of depravity of conduct *intrinsic* to the very proceedings, the Court has every right and, indeed, the duty to decline him relief; and that equally a party cannot pray to the Court for relief, based on the recognition tion his own fraud or fraudulent contrivances, the substance of the defence being that the recognition of this fraud will preclude the application of some other provision of law to his case. *Muthu Ramalingam* v. *Sembuselli Gounder*[3], decides that that where the rules relating to elections under the Madras Co-operative Societies Act, 1961, prescribed that persons seeking election were not to take part in any stage of the conduct of the election but a Government order exempted such procedure for the first election, and the outgoing President who was a candidate for election called for and scrutinised the nomination papers and conducted the election such election was liable to be quashed as opposed to fair play and principles of natural justice. *Asea Electric Private Ltd.* v. *Joint C. T. O.*[4], lays down that where an assessee has paid tax, though voluntarily, but by mistake of law he is entitled to ask for refund of such tax by means of a petition under Article 226; that where a tax is levied by

1. (1969) 1 M.L.J. 261 : (1969) M.L.J. (Crl.) 217.
2. (1969) 1 M.L.J. 281 : I.L.R. (1968) 3 Mad. 18 : (1969) M.L.J. (Crl.) 236.
3. (1969) 2 M.L.J. 243.
4. (1969) 2 M.L.J. 632.

mistake of law, it is ordinarily the duty of the State, subject to any provision in the law relating to sales tax, to refund the tax; that no question of estoppel would arise when the mistake of law is common to both the parties; that if refund is not made remedy through Court is open subject to the same provisions, if any, and the period of limitation, namely, three years from the date when the mistake becomes known to the person; that *certiorari* being a discretionary remedy is not confined to the parties before the Subordinate Tribunal, but would extend to any person aggrieved, including a stranger and that the above principle will apply to cases of dependent orders where the grant of relief to one will involve a denial to the other. *Savarinathan* v. *Director of Postal Services*[1], states that in the exercise of jurisdiction under Article 226 it will not be the function of the High Court to canvass the adequacy of material where the authority had *bona fide* come to the conclusion that an officer should be retired in the public interest on his attaining the age of fifty-five years. *Mohambaram* v. *Jayavelu*[2], expresses the view that to sustain a *quo warranto* writ the applicant has to satisfy the Court that the office is question is a substantive public office and that the incumbent whose position is questioned is holding the post without legal authority, that is, that in appointing him the Government had contravened statutory provisions or binding rules. *Periaswamy* v. *Deputy C.T.O.*[3], holds that where the authority has merely issued a notice to the assessee to show cause against the levy of composition fee under the Madras Entertainments Tax Act, 1939, as amended by Madras Act (XX of 1966), it would be premature to issue a writ of prohibition, and that it would be open to the petitioner to give a reply to this notice and also make any representations *contra* before the actual compounding fee is levied on him. In *Gobalousamy* v. *Union Territory of Pondicherry*[4], it is pointed out that Article 246 (4) has to be read along with Article 239-A; that to confine the powers of legislation with reference to Union Territories to Parliament alone is to ignore the Constitution (Fourteenth Amendment) Act; that when Parliament pursuant to the power vested in it under the Constitution, provided by law a Legislative Assembly for the Union of Pondicherry and invested the Legislature with certain legislative powers it cannot be said that it amounted to an abdication by Parliament of its power of legislation nor can the exercise of power by Parliament under Article 239-A be considered as unconstitutional delegation; that the legislative power of Parliament to enact the Government of Union Territories Act (XX of 1963) is found in Article 239-A read with Article 248 and Entry 97 of the Union List; and that there is no limitation on Parliament under Article 239-A that in mentioning or defining the power of the legislative body it had created it should not vest the body with all powers it could but should select and invest that body with some only of the topics for legislation. *Subramania Pillai* v. *State of Madras*[5], states that in so far as sales tax law is concerned the State has the exclusive right to legislate provided it does not impinge on Article 301 or 304 of the Constitution, that under Article 304 (*b*) no amendment to an existing law shall be introduced without the previous sanction of the President and that this is on the supposition that the main Act requires such a sanction. *Natesa Gounder* v. *State of Madras*[6], makes it clear that the power of the Legislature of the State to make laws is confined to the whole or part of that State, that the Essential Commodities Act is a Parliamentary enactment for controlling production, supply and distribution of certain essential commodities, that by virtue of delegation the State Government exercises the power conferred by section 3 of the Act and that the prohibition of sale outside the State without a permit is beyond the powers of the State Government.

(To be continued.)

1. (1969) 1 M.L.J. 595.
2. (1969) 1 M.L.J. 261 : (1969) M.L.J. (Crl.) 217.
3. (1969) 2 M.L.J. 399.
4. (1969) 2 M.L.J. 306.
5. (1969) 2 M.L.J. 312.
6. (1969) 2 M.L.J. 186.

In *State of Madras* v. *K.A. Joseph*[1], it is pointed out that there is a principle of natural justice, that an officer is entitled to ask if he is suspended from his office because of grave reports of misconduct, that the matter should be investigated with reasonable diligence and that charges should be framed against him within a reasonable period of time, and that if such a principle were not to be recognised, it would imply that the executive is being vested with a total arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. *State of Madras* v. *Sri Vanamamalai Mutt*[2], holds that laws in this country should speak the same language in emergency as in normal times and Courts even in periods of emergency have to be alert to see that any coercive action is justified in law, that restraints on the guaranteed freedom of the subject can only be under law and not by executive ukase, that under a proclamation of emergency the suspension of rights under Part III of the Constitution is limited in scope and can be invoked only where persons have been deprived of their rights under Articles 14, 21, 22 under the Defence of India Act, that the fact than an impugned order made or executive action is taken under a pre-emergency legislation will not make an exception to the application of Article 358, that Article 358 could save the impugned order only from objections founded on Article 19 but not from other infractions of the law or lack of the requisite power in the law-making authorities, and that the validity of the order could be examined to see whether it is within the ambit of the pre-emergency legislation.

INDUSTRIAL LAW.

In *Sri Bharathi Mills, Pondicherry* v. *Krishnaswamy*[3], it is held that the question whether an order of termination of service of a worker is in reality an order in pursuance of the contract of service or one of dismissal for misconduct is a question of fact to be decided on the facts and circumstances of each case and that it is not the form of the order but its substance that is material. *Kodaikanal Motor Union* v. *Nallathambi*[4], states that while it may not be a safe precedent in labour-management relations, to hold that the dismissal of a worker for misconduct, *per se* would disentitle him to payment of bonus for a year when other employees similarly situated but who continued in service had been paid bonus it will be proper to recognise an exception to this rule in cases where the dismissal has been for misconduct which involved loss or damage to the management, that in these excepted cases the management would be entitled to withold bonus as a set off against the loss or damage and that it will be then for the worker to prove that in the particular management wherein he is employed there is a practice contrary to the general principle. *Southern India Tannery* v. *Industrial Tribunal*[5], makes it clear that the financial resources of a concern would be a relevant factor for deciding the necessity of a gratuity scheme, that the fact that one concern is required to frame a scheme and another similar concern is not so required will not amount to discrimination, that a dispute about the necessity to frame a gratuity scheme for the workers of a concern is from the outset a collective industrial dispute and there is no question of the necessity of sponsoring such a dispute either by a majority of the workers in the concern or by a substantial number of them before a reference could be made to the Industrial Tribunal. *Super Surgical Co.* v. *Desikan*[6], lays down that neither in the Industrial Disputes (Central) Rules nor in the Madras Industrial Disputes Rules, the Labour Court is empowered to grant leave to withdraw an application with permission to file a fresh application on the same grounds. *T. V. Sundaram Iyengar & Sons (P.) Ltd.* v. *State of Madras*[7], decides that section 2-A of the Industrial Disputes Act enacted by Parliament rendering a dispute between an individual workman and his employer, an industrial dispute, is *intra vires* the Legislature and falls within the scope of Entry 22 of List III of Schedule VII and the legislation can also be sustained under the residuary Entry 97 in List I. *Madras District Automobile, etc.*

1. (1969) 2 M.L.J. 242.
2. (1969) 2 M.L.J. 324.
3. (1969) 1 M.L.J. 116.
4. (1969) 1 M.L.J. 147.
5. (1969) 1 M.L.J. 388.
6. (1969) 1 M.L.J. 170.
7. (1969) 2 M.L.J. 214.

Union v. *State of Madras*[1], points out that where there are two unions of workers in the concerned industry or unit of industry and one union which contains the majority of workers claims to have arrived at a settlement with the management through negotiation in respect of the very matters in controversy or some of them, a minority union cannot contend that these facts should altogether be omitted from consideration by Government in deciding on the expediency of the reference under section 10, that on the contrary those facts would be perfectly relevant, and that it would be equally relevant whether developments subsequent to the period or date when the issues in controversy were raised may render the reference itself otiose. *Antiseptic Employees Unit* v. *State Government of Madras*[2], holds that the order of the Government made under section 10 (1) read with section 12 (5) is administrative in character, that the appropriate Government is not precluded from considering even *prima facie* the merits of the disputes when it decides the question as to whether its power to make a reference should be exercised under section 10 (1) read with section 12 (5) or not, and it must be held that a *prima facie* examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under section 10 (1), that the Government has a discretion to make a reference or not, and that the Court could not canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi-judicial determination. *T.V. Sundaram Iyengar & Sons (P.) Ltd.* v. *State of Madras*[3], makes it clear that the State Government has the right to make a reference under section 10 of the Act even after it had declined to make a reference earlier. *Natarajan Engineering Works* v. *Govindasami Naicker*[4], states that section 12 (3) requires that a memorandum of the settlement must be signed by the parties to the dispute. *Kumbakonam Electric Supply Corporation* v. *Presiding Officer*[5], points out that there is a distinction between an agreement under section 18 (1) and an agreement under section 18 (3) arrived at in the course of conciliation proceedings, that a settlement under section 18 (1) would bind only the wokers who were represented by the union at the time when the settlement was arrived at and not the workers who had ceased to be members of the union at the time the settlement was arrived at and that section 33-C (2) read with section 18 (1) gives the right only to the parties to the settlement to take advantage of the settlement and claim the benefit which is capable of being computed in terms of money. *Kodaikanal Motor Union* v. *Nallathambi*[6], makes it clear that the jurisdiction of the Labour Court under section 33-C (2), when a claim for payment of bonus is raised before it, is not confined to its determination only if there is an award or settlement about the bonus ; that the absence of an award or settlement will not *per se*, exclude the jurisdiction of the Labour Court to consider the claim for computation of bonus by the worker, that what the Labour Court has to consider, when a claim for bonus is made before it under section 33-C (2) in the absence of an award or settlement, is whether in the light of the particular circumstances in which the claim to bonus is made in the case the worker's claim could be sustained or not and that it will be entirely out of place for the Labour Court in proceedings under section 33-C (2) initiated several years after the original order of dismissal of the worker, to embark upon an enquiry about the propriety of the order of dismissal or its terms, constituting as it were an appellate authority, over the decision of the management. *Gillanders Arbuthnot & Co.* v. *Ramachandran*[7], holds that an adjudication from the Labour Court that the termination of the services of an employee by an employer was unlawful and in that event, he would be entitled to be paid gratuity does not fall within section 33-C (2) ; that the section assumes the pre-existence of a right to claim a benefit which is capable of being computed in terms of money ; that the Labour Court can go into the question whether such a right exists or not, and if it exists, it can thereafter compute its value in terms of money ; but it is a different

1. (1969) 1 M.L.J. 409.
2. (1969) 2 M.L.J. 198.
3. (1969) 2 M.L.J. 214.
4. (1969) 2 M.L.J. 211.
5. (1969) 1 M.L.J. 90.
6. (1969) 1 M.L.J. 147.
7. (1969) 2 M.L.J. 384.

thing when the Labour Court is called upon under the section to decide the issue whether the dismissal of the employee is lawful or not and then proceed to award a certain sum as gratuity, which will really be compensation which he would be entitled to for wrongful dismissal.

CONTRACTS AND SPECIFIC RELIEF.

In *K. Sriramulu* v. *T.A. Narayana*[1], the Supreme Court makes it clear hat a mere reference to a future formal contract will not prevent a binding bargain between the parties, that the mere fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract, that a reference to a future contract may however be made in such a way as to show that the parties did not intend to be bound until a formal contract is signed, that the question depends upon the intention of the parties and the circumstances of each particular case, that the fact of a subsequent agreement being prepared may be evidence that the previous negotiation did not amount to a concluded agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish that they cannot be bound by a previous agreement, and that similarly the mere omission to settle the mode of payment of the price does not affect the completeness of an oral agreement for sale when the vital terms of the contract like the price, the area of the land to be sold and the time for completion of the sale are all fixed. *Municipal Council, Karur* v. *Muthuraja*[2], points out that for a concluded contract to come into existence the offer and related acceptance must be absolute and not qualified or conditional; that a provision not to resile from an offer before final acceptance unless supported by consideration has no legal validity and what is called a provisional acceptance by the offeree could be withdrawn before the performance of the conditions of the provisional acceptance; that the auctioneer's calling for bids at an auction is not an offer; that it is the bid that constitutes an offer which the auctioneer may reject or accept; that a provision in the conditions of an auction sale that bidding shall not be retracted is inoperative in the absence of consideration therefor or some statutory provision providing against the withdrawal of the bid and that in the absence of any legal obstacle a bid could be withdrawn before the contract gets completed by final acceptance. In *Boothalinga Agencies* v. *Poriaswami Nadar*[3], the Supreme Court makes it clear that the doctrine of frustration of contracts is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence falls within the purview of section 56 of the Contract Act, that section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties in contrast with English law and that the doctrine of frustration cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party. *Coimbatore D.C.C.S. & M. Society Ltd.* v. *Union of India*[4], decides that to sustain a claim by the consignee against the consignor for reimbursement in respect of the amount which the consignor should have paid to the carrier at the place where the goods were consigned, it is not necessary to prove that the property in the goods had passed to the consignee. *Chockalingam Chettiar* v. *Karuppan Chettiar*[5], expresses the view that it is not the law that where a person spends something (and as a result benefits himself and another person) at the request of that person not intending to do it gratuitously he is not entitled to recover from the person so benefitted a share of the expenses proportionate to the benefit obtained by that person. *Natesa Chettiar* v. *Madras State Electricity Board*[6], holds that a stipulation for payment of a minimum sum whether electricity was consumed or not is not a provision by way of penalty but is only consideration for keeping the energy available to the consumer at his end. *Meenakshinada Dikshitar* v. *Murugesa Nadar*[7], lays down that 'deposit' or 'earnest money' is not part of the

1. (1969) 1 M.L.J. (S.C.) 6.
2. (1969) 1 M.L.J. 394.
3. (1969) 2 M.L.J. (S.C.) 15.
4. (1969) 2 M.L.J. 602.
5. (1969) 2 M.L.J. 538.
6. (1969) 1 M.L.J. 69.
7. (1969) 1 M.L.J. 474.

price bargained for, but it is unambiguously money paid for the due performance of the contract; that mere misdescriptional nomenclature will not conclude matters and that it is the intention of the parties that governs; that the expression adopted may be a guide to find out such intention but is not always the sole guide; that the principle is applicable to all contracts and not to mercantile contracts alone; that in a given contract if a sum is paid under the caption of deposit or earnest money or has to be interpreted as such according to the intention of the parties, and is made forfeitable in case of breach, even the Courts have to adjudge the reasonable compensation to which a party would be entitled in such circumstances; that such determination can be made either in a suit filed by the depositor against the depositee or in a suit by the depositee complaining of such breach; that the defendant who interdicts a claim for return of the deposit has to plead and prove the damage suffered by him upon which the Court will adjudicate as to what may be the reasonable compensation to which the defendants are entitled and deduct the same and award decree in favour of the plaintiff only for the balance; that the procedure which the defendant has to follow is to allege and prove damage either by putting forward a plea of set-off or of counter-claim against the plaintiff for damages for breach of contract and that an independent suit for the same purpose is also maintainable. *Kathoon Bivi Ammal* v. *Arulappa Nadar*[1], states that the policy of the law is that the agent's action should bind the principal even though the principal might have cancelled the agent's authority unless the third persons with whom the agent enters into contracts knew of the termination of the agency. *Saleha Bi* v. *M/s. A.H.A. Rahim Saheb & Co.*[2], holds that when the relationship of agency was established the determination of the actual liability in any particular amount should be as a result of an order to take an account, that is to say, a preliminary decree would be the proper one to pass in a suit for accounts, but it would be different if the case of the agent was that an account had already been furnished and accepted; that an agent is not discharged from his duty to render an account merely by the submission of a set of written accounts and his duty consists in explaining them wherever necessary and in producing vouchers and the like in respect of any expenditure that may have been incurred for and on behalf of the principal; that though this part of the duty cannot be avoided it would still be a question of fact in each case whether the accounts submitted are not self-explanatory or at least whether, in the absence of any demand for an explanation one can still say that the agent's duty has not been discharged; that the right to claim accounts from an agent, as recognised in section 213 of the Contract Act is subject to the qualification that the accounts between the principal and the agent are settled or stated, and that where the principal never took any objection to the accounts submitted by the agent from time to time but went further and incorporated the effect of those accounts into his own accounts, the conclusion would be that the accounts are settled or stated. *Minor Dorairaj* v. *Karuppiah Ambalam*[3], points out that a firm of two partners necessarily gets dissolved on the death of one of the partners and to such a partnership the phrase "subject to contract between the partners' cannot apply, because a partnership necessarily involves a minimum of two partners and that even where the legal representatives of the deceased partner take his place and carry on the business with the other partner it will only be a new partnership. In *Kunju Pillai* v. *Periasami*[4], it is held that the special provisions of the Negotiable Instruments Act which enable an endorsee to sue on the instrument on the foot of such an endorsement creates an exception to the ordinary law of agency and the principle adumbrated in the Indian Contract Act in so far as agency in general is concerned and in particular section 201 therein, cannot be telescoped into this enactment so as to interpret its intendment; that the holder of a negotiable instrument who secures the same by endorsement for purposes of collection in a manner known to law does not lose his right of action by reason of the death of the original payee; that in fact by such an endorsement he secures the title to the instrument enforceable by him in a manner ordinarily known to law and not liable to be

1. (1969) 1 M.L.J. 241.
2. (1969) 1 M.L.J. 557.
3. (1969) 1 M.L.J. 348.
4. (1969) 2 M.L.J. 148.

divested by reason only of the fact that the original payee died soon after such an endorsement and that the suit itself was brought on the foot of such an endorsement by the endorsee after the death of the original payee and that if the endorsee had in him and in the eye of law he had the right to institute the suit as a regular holder and as a person in whom the title in the promissory note or the negotiable instrument had vested under the special law, such a cause of action on the foot of which, the endorsee came to Court survives on his death to his legal representatives under the common law. *Periakaruppan* v. *Mayalagan*[1], points out that where a plaintiff sues on a negotiable instrument under an assignment in his favour constituting him as an agent for collection, the subsequent death of the principal will not render the suit incompetent, that with the death of the principal the authority of an endorsee for collection does not end and that, however, in such a case, the execution should be protected against a possible double jeopardy, namely, a further claim on the bill or instrument by the heirs of the deceased principal by the Court calling on the plaintiff to implead the legal representatives of the deceased principal as parties to the action. *Sonai* v. *Chinniah Konar*[2], expresses the view that sections 11 and 12 of the Negotiable Instrumens Act which deal with the definition of inland instrument and foreign instrument are purely for the purpose of the Act and it cannot have any relevance for deciding the question whether when a suit is instituted in India on a promissory note executed and endorsed in Singapore outside India the Singapore Moneylenders Act would apply or not. In *Kalyanasundara Nadar* v. *Muthuraman*[3], it is held that in case of employment between master and servant section 21 (*b*) of the Specific Relief Act would make the remedy by way of specific performance of the contract unavailable and the remedy would be only damages, but where an employment is governed by statutory obligations and terminable only in the manner provided by the statute there could be no valid and effective termination of the contract unless the procedure prescribed by the statute is complied with by the party intending to terminate the contract, and that in a case of termination not conforming to that procedure the servant may be entitled at the discretion of the Court to a declaration that the termination is *null* and *void* and that he continues in the employment of the master. *Ramachandra Sarma* v. *Ayesha Begum*[4], holds that where the rights under an agreement to resell certain property, entered into between two adults, is assigned in favour of minors, it cannot be said that the assignee minors could not specifically enforce the contract on the ground that the test of mutuality is not satisfied, that the fact that the assignees happen to be minors does not mean that the contract cannot be enforced by them or as against them and that the relevant date on which the test of mutuality is to be applied is the date of the contract itself and not the date on which it is sought to be enforced. *Sinna Ponnu* v. *Singara Odayar*[5], makes it clear that a transferee to claim the protection under section 27 (*b*) of the Specific Relief Act must have paid the entire consideration and if for any portion of the price a security (like a promissory note) alone had been executed, the transferee cannot claim to be a transferee "who had paid his money".

Property Law.

In *Arunachalam Asari* v. *Sivan Perumal Asari*[6], it is made clear that section 48 of the Transfer of Property Act embodies the well established rule of priority founded on law and justice that if a person purports to create by transfer at different times, rights over the same immovable property and such rights cannot all co-exist or be exercised to their full extent together, each later created transfer shall be subject to rights previously created; that the rights of priority will have to be determined by the combined operation of section 48 of the Transfer of Property Act and sections 47 and 49 of the Registration Act; that once the document is registered section 49 of the Registration Act has no relevance and the document takes effect from the date

1. (1969) 1 M.L.J. 171.
2. (1969) 1 M.L.J. 590.
3. (1969) 1 M.L.J. 317.
4. (1969) 1 M.L.J. 427.
5. (1969) 2 M.L.J. 358.
6. (1969) 2 M.L.J. 530.

of its execution by reason of section 47 of that Act with the result that the rights of priority of successive transferees will necessarily have to be determined in accordance with the rule embodied in section 48 of the Transfer of Property Act ; that except where the Legislature has made specific provision to protect the rights of a subsequent transferee in good faith and for consideration, the right of priority embodied in section 48 would apply ; that the right of priority of a prior transferee will be postponed only if he is guilty of any fraud, misrepresentation or gross negligence ; that the prior transferee cannot be said to be guilty of any gross negligence merely because he takes his own time to get the document registered—the time allowed by the statute; that by that conducet which the statute permits him, he could not be said to be facilitating the owner of the propety to commit fraud ; that what a man does, what the law of the land permits him to do, cannot amount to gross negligence; that a subsequent transferee must necessarily take the risk of the owner having entered into a prior transaction concerning the property and that transaction remaining unregistered but being completed by registration subsequent to the second transaction; and that though section 78 of the Transfer of Property Act applies only to mortgages, the principle underlying it would apply to transactions like sales also. In *M.L.A. Jabbar Sahib* v. *H.V. Sastri & Sons*[1], the Supreme Court points out that for attestation the witness should have put his signature *animo attestandi* and therefore where a registering officer puts his signature on a document registered by him in discharge of his statutory duty under section 59 of the Registration Act and not for the purpose of attesting it, or where an identifying witness puts his signature on the document to authenticate that he has identified the executant, or where a person puts his signature only for the purpose of authenticating that he was the scribe such persons cannot be regarded as attesting witnesses. *Jayarama Mudaliar* v. *Ayyaswami Mudaliar*[2] states that the principle of *lis pendens* would not extend to an involuntary alienation in execution of a mortgage decree where the mortgage was prior to the suit in which the doctrine is relied on, that the rights of the purchaser in execution of such mortgage decree would date back to the date of the mortgage and that the doctrine of *lis pendens* does not affect sales under the Revenue Recovery Act, but in view of the provisions in section 7 (*c*) of the Land Improvement Loans Act, 1883, the principle that *lis pendens* cannot apply to revenue sales is confined to the property for the improvement of which the loans taken under the Act were taken and not all the properties covered by the revenue sales. *Kalyani Ammal* v. *Ezhumalai Nattar*[3], lays down that a vendor certainly cannot escape from responsibility for the obligation she has guaranteed when it is ultimately found that her title was not as extensive as she purported it to be, that she may be dead but her estate could be made to answer for the breach, that the covenant for quiet enjoyment in its nature can survive the convenantor that it is not simply a personal convenant of the vendor to come to an end with life with which the purported transfer came to an end and the covenant neither expressly nor impliedly is limited in its duration to the lifetime of the vendor. In *M.L.A. Jabbar Sahib* v. *H.V. Sastri & Sons*[1], the Supreme Court makes it clear that section 100 of the Transfer of Property Act does not prescribe any particular mode of creating a charge, that the amendment of the section by Act XX of 1929 which applies all the provisions relating to a simple mortgage to a charge also does not and was not intended to prescribe any particular mode for the creation of a charge and that the basic assumption underlying the doctrine of notice enunciated in section 3 implies that a charge can be made without any writing. *Veerammal* v. *Krishanan*[4], states that a mortgagor can assign his equity of redemption, and for such assignment the consent of the puisne mortgagee is not necessary ; if such an assignment can be made by private negotiation there is no good reason why such an assignment cannot take place by process of Court in execution of a money decree or any other decree ; and all that the law safeguards in favour of the puisne mortgagee is that his right as puisne mortgagee shall not be affected (*i*) to redeem the prior mortgage and to sell

1. (1969) 2 M.L.J. (S.C.) 107.
2. (1969) 2 M.L.J. 209.
3. (1969) 1 M.L.J. 76.
4. (1969) 2 M.L.J. 477.

the property for the amount due on both the mortgages or (*ii*) to sell the property subject to the first mortgage. *Kanakaraj* v. *Sundararaja Iyer*[1], points out that the rule of mortgage law of insisting upon a complete and final settlement of all accounts between the mortgagor and the mortgagee in one single action has been so strictly insisted upon as to attract the principles of *res judicata* under section 11, Civil Procedure Code, and the splitting up of the cause of action and reliefs under Order 2, rule 2, Civil Procedure Code, the principle being that the mortgagor and the mortgagee ought to claim in the same suit all the reliefs flowing out of the mortgage transaction; that the possession of the mortgagee after tender and deposit of the mortgage money is not that of a trespasser even though his possession thereafter is wrongful and a claim against him for rents and profits is not a claim for mesne profits and he is under a statutory liability to render accounts under section 76 (*i*) of the Transfer of Property Act; that the liability sought to be enforced against the mortgagee for surplus profits received under section 76 (*i*) is a statutory liability and that Article 105 of the Limitation Act would govern every case of a suit by a quondam mortgagor against the quondam mortgagee and including suits for the rendition of accounts under section 76 (*i*) of the Transfer of Property Act. *Saleh Brothers* v. *Rajendran*,[2] lays down that the principle that once an election has been made and the lease determined the election is irrevocable would apply even when the election is not followed by a suit in ejectment and if the lessor had merely given a notice in writing of his intention to determine the lease as provided in section 111 (*g*); that acceptance of rent which has become due since the forfeiture is regarded as waiver of forfeiture under section 112, because the acceptance of rent is an affirmance that the lease was subsisting at the time when the rent became due after the forfeiture but such acceptance after the suit in ejectment is filed is not so regarded because once the matter has come to the Court the election has become irrevocable; that the principle underlying section 112 that after the landlord had elected to avail himself of the forfeiture and had given notice in writing to the lessee of his intention to determine the lease and followed it up by a suit in ejectment there is no waiver, would equally apply to section 113 where the landlord has instituted a suit in ejectment, preceded by the issue of a notice determining the lease; that the absence of a corresponding proviso, in section 113 is of no significance and does not manifest any intention on the part of the Legislature to make any difference; that in order to operate as waiver both the limbs of section 113 must concurrently operate, which means, that an act by itself and of its own force, without reference to the intention of the parties cannot bring about a waiver; that the principle underlying section 116 will also apply in applying section 113; and that the preponderance of the weight of authority is that in addition to the receipt of rent by the landlord there should be proof that the receipt was with the intention to treat the lease as subsisting and there should be either an express contract or conduct of the parties justifying the inference that, after the determination of the contractual tenancy, the landlord's intention was that the occupation of the premises was as a tenant.

LAND TENURES AND TENANCY LEGISLATION.

In *Ganapati Thevar* v. *Navaneetheswaraswami Devasthanam*[3], the Supreme Court makes it clear that if a case falls within section 6 (1) as well as section 8 (5) of the Estates Land Act, then the governing provision will be section 8 (5) and the case is taken out of the scope of section 6 (1); that from the language of section 8 (5) it is not possible to hold that the contract between the landlord and the tenant itself is exhausted or superseded at the end of the twelve years period mentioned therein; that on the other hand under section 8(5) a landholder is given the right during the said period of twelve years to admit tenants into possession of such lands on such terms as may be agreed upon; that in order to fall within the definition of 'cultivating tenant' under the Madras Cultivating Tenants Act, 1955, a person should carry on personal cultivation which again requires that he should contribute physical

1. (1969) 1 M.L.J. 456.
2. (1969) 1 M.L.J. 247.
3. (1969) 2 M.L.J. (S.C.) 31.

labour which implies physical strain, the use of muscles and sinews, and not mere supervision of work, or maintaining accounts or distributing the wages. *State of Madras* v. *Ramalingaswamigal Madam*[1], decides that it is clear from the Madras Estates (Abolition and Conversion into Ryotwari) Act that what really vests in the Goverment in respect of a ryoti or private land is merely title and there is no vesting of possession, which is protected under the proviso to section 3 (*d*) of the Act and so long as the possession of the land continues to vest in the ryot he would be entitled to protect his rights in respect of the same by resorting to civil Courts ; that there is no machinery in the Act to determine whether a land in an estate is a ryoti land or a communal land ; that the grant of a ryotwari patta under the Act is a right created under the Act and the machinery provided under the Act is the only remedy for obtaining ryotwari patta ; that no suit will lie for the grant of a patta, and even in respect of an enquiry for grant of a ryotwari patta under section 11 read with section 3 (2) of the Act, the decision as to question of title by the statutory authorities is only an incidental matter which would not preclude a civil Court independently enquiring into it in a properly constituted suit; and that having regard to section 21 of the Act providing for survey of the estates, and the proviso to section 3 (*d*) protecting the possession of a ryot in a ryoti land and the general section 11 providing for the grant of ryotwari patta to such ryots it could not be said that the Act does not contemplate an order by the authority under the Act for grant of ryotwari patta and there could be no doubt about the finality of such an order under section 64-C of the Act. *R.M. S.R.S. Subbiah Servai* v. *Assistant Settlement Officer*[2], holds that under section 5 (2) of the Estates Abolition Act of 1948 the Director of Settlement is empowered in revision to cancel or revise any of the orders or proceedings of the Settlement Officer, that neither the section nor the rules confer any power on the Director of Settlements to remand a case, that since the Civil Procedure Code is not applicable to the proceedings before him in a proceeding under the section the Director will have himself to dispose of the petition before him by cancelling or revising the orders of the Settlement Officer and cannot set aside the order and remand the case to the Assistant Settlement Officer for fresh enquiry and disposal. *Murugayya Angurar* v. *Nataraja Iyer*[3], states that 'cultivating tenant' as defined in the Cultivating Tenants Protection Act includes the heirs of a cultivating tenant and it cannot be said that if one or more heirs find it inconvenient to cultivate the land and seek avocation elsewhere the tenancy would come to an end even as regards the other cultivating tenants in actual possession of the land. *Perumalsami Konar* v. *Dr. C.K. Rajagopal*[4], expresses the view that while it is true that where the type of crops contemplated in section 15 of the Madras Cultivating Tenants (Payment of Fair Rent) Act of 1956 is raised over the entire extent of the land leased no fair rent could be fixed under the Act, where such crop is cultivated over only a part of the extent of land leased the proper thing to do is to leave out that parcel for the calculation of fair rent and fix the fair rent in respect of the remaining area leaving the landlord free to recover the contractual rent in regard to the area exempted under section 15 ; and that in arriving at the market price of the crop for fixation of a fair rent under the Act the Rent Controller, should take into account all the available evidence such as the evidence of the village karnam, price of commodities published in the Gazette, etc., and cannot arrive at the market price on mere surmise. *Annavi Moopan* v. *Munia Moopan*[5], points out that the Madras Cultivating Tenants (Payment of Fair Rent) Act whilest providing for the fixation of fair rent in the case of wet land where the normal produce is paddy it avoids to advert itself to cases where the main crop is sugarcane, plantain or betel vines etc.; that if sugarcane is the main crop raised by the tenant, nothing in the Act shall apply to such land during the period when such land is used for such a crop ; and that in a case where the tenancy does not expressly connote the rent payable by the tenant to the landlord, then the Courts have jurisdiction, as in the

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1. (1969) 2 M.L.J. 281.
2. (1969) 2 M.L.J. 642.
3. (1969) 1 M.L.J. 503.
4. (1969) 2 M.L.J. 304.
5. (1969) 1 M.L.J. 379.

United Kingdom a jury has, to fix what is known as reasonable market rent for the property and avoid unjust enrichment to the tenant.

INCOME-TAX LAW.

In *Commissioner of Income-tax* v. *Dharma Reddy*[1], the Supreme Court states that the definition of 'business' in section 2 (4) of the Income-tax Act of 1922 as including any trade, commerce or manufacture or any advantage or concern in the nature of trade, commerce or manufacture is of wide import, the underlying idea being of continuous exercise of an activity. In *Kapurchand Shrimal* v. *Tax Recovery Officer*[2], the Supreme Court makes it clear that under the Income-tax Act of 1961, a Hindu undivided family is a distinct taxable entity, apart from the individual members who constitute the family; that the scheme of the Act is to treat the assessee failing to pay the tax due within the prescribed period a defaulter; that by the clearest implication of the statute the assessee alone may be deemed to be in default for non-payment of tax and liability to arrest and detention on failure to pay the tax due is also incurred by the assessee alone; that the manager of a Hindu Joint family by virtue of his status is competent to represent the family, but on that account he cannot for the purpose of section 222 of the Act be deemed to be the assessee when the assessment is made against the Hindu undivided family and a certificate for recovery is issued against the family; that there is no provision in the Act which deems the manager to be the assessee for the purpose of the assessment and recovery of tax when the income of the Hindu undivided family of which he is the manager is assessed to tax; nor is there any provision enabling the Income-tax Officer to treat the manager of the Hindu undivided family as an assessee in default under the provisions of the Act; and that the Legislature had made no provision for recovery of tax by recourse to the personal property of the manager of the Hindu undivided family or by his arrest and detention for default of the family in paying the tax due. In *Commissioner of Income-tax* v. *Dharma Reddy*[1], the Supreme Court points out that in order to get the benefit of section 24 (2) (*ii*) of the Income-tax Act of 1922 especially after the amendment made by the Finance Act of 1955 the assessee need not carry on the same business in the year of assessment; that the change in the language of the provision substituted by the amending Act is significant and all that the assessee has to show is that the business in which the loss was originally sustained continued to be carried on by him in the assessment year; and that the identity of the business for the purpose of section 24 (2) (*ii*) does not change by reason of the change in persons who carry on that business since it continued to be carried on by the same individual. In *Commissioner of Income-tax* v. *Chenniappa Mudaliar*[3], the Supreme Court makes it clear that the scheme of the provisions of the Income-tax Act relating to the Appellate Tribunal is that it has to dispose of an appeal by making such orders as it thinks fit on the merits, that the language of section 33 (4) and in particular the use of the word 'thereon' shows that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant which can only be done by giving a decision on the merits on fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear; and that the Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. In *Baliah* v. *Rangachari*[4], the Supreme Court lays down that having regard to the terms and language of the Income-tax Act of 1922 and the Penal Code there is no repugnancy or inconsistency and the two enactments can stand together and they must therefore be treated as cumulative in effect; that the provisions enacted under section 52 of the 1922 Act do not alter the nature or quality of the offence enacted in section 177 of the Penal Code but merely provide a new course of procedure for what was already an offence and in such a case the new statute is regarded not as

1. (1969) 2 M.L.J. (S.C.) 95.
2. (1969) 1 M.L.J. (S.C.) 1
3. (1969) 2 M.L.J. (S.C.) 90.
4. (1969) 2 M.L.J. (S.C.) 9.

superseding nor repealing by implication the previous law but as cumulative; that there would be no repeal of acts by implication unless the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment; that under section 6 of the General Clauses Act a legal proceeding in respect of an offence committed under the 1922 Act may be instituted even after the repeal of that Act by the 1961 Act and punishment may be imposed as if the repealing Act had not been passed; that the provisions of section 297 (2) of the 1961 Act are not intended to be completely exhaustive and in regard to such matters as are not expressly saved by section 297 (2) the provisions of section 6 (e) of the General Clauses Act will apply; that there is no statutory requirement that under section 53 of the 1922 Act the complaint petition itself must be filed by the Inspecting Assistant Commissioner and that the institution of a complaint under section 52 of the 1922 Act is circumscribed by sufficient safeguards and there is no violation of the guarantee under Article 14 of the Constitution.

Hindu Law and Related Statutes.

In *K.V. Krishna Rao* v. *Sub-Collector, Ongole*[1], the Supreme Court decides that under the Hindu law a tank can be an object of charity and when a dedication is made in favour of a tank the same would be a charitable institution. In *Chockalinga Sethurayar* v. *Arumanayakam*[2], the Supreme Court expresses the view that in regard to private charities if there is no contrary provision in the original grant the right of management passes to the natural heirs of the original grantee; that even assuming that the word 'property' in the Hindu Law of Inheritance Act of 1929 does not include a trusteeship right still under Hindu law succession to hereditary trusteeship which relates to a private charity is governed by the ordinary rules of inheritance if there is no special custom to the contrary and that inasmuch as Act II of 1929 has amended the general law of inheritance in certain respects the same alteration must be recognised in regard to succession to trusteeship as well. *Desa Bathudu* v. *Dilli Achari*[3], holds that to the property of a female Hindu dying intestate leaving no Class I or Class II heirs nor agnates of the husband but only cognates it is the degree of descent that will decide preference where the degree of ascent is the same. *Dakshinamurthi Mudaliar*, In re[4], points out that under the Hindu law, a father is the natural guardian of his minor son and he does not require any order from any Court appointing him or declaring him as the guardian of his minor son; consequently an application by the father for the purpose of appointing him or declaring him as the guardian of the minor in respect of properties belonging to the minor would not be maintainable under the provisions of the Guardians and Wards Act of 1890, and this position gets further strengthened after the enactment of the Hindu Minority and Guardianship Act. *Mayilswami Chettiar* v. *Kaliammal*[5], lays down that even when there is a legal guardian in existence any alienation of the minor's property by a *de facto* guardian would be valid if it is for necessity. *Paramasami Pillai* v. *Sornathammal*[6], states that the Hindu law has vastly changed and the ideas of Hindus has also changed with the times; that whatever might have been the position at a time when the marriage was said to be a samskara and it was therefore considered that marriage was not merely for the purpose of sexual intercourse, in the context of the enactment of the Hindu Marriage Act, which provides for declaration of nullity of marriage as well as for divorce, it is no longer possible to say that marriage with a sexless or impotent person is valid; and that a declaration of nulllity of marriage can be asked for only by either party to the marriage and not by a third party and in any case after the death of one of the parties nobody can question the validity of the marriage. *Vathsala* v. *Manoharan*[7], expresses the view that when an order of nullity of marriage is made and the law allows an appeal as well as an application to set aside an *ex parte* order and actually those remedies have been resorted to, any act

1. (1969) 1 M.L.J. (S.C.) 83.
2. (1969) 2 M.L.J. (S.C.) 25.
3. (1969) 2 M.L.J. 635.
4. (1969) 1 M.L.J. 345.
5. (1969) 1 M.L.J. 177.
6. (1969) 1 M.L.J. 197.
7. (1969) 1 M.L.J. 402.

of the parties as for instance, the petitioner contracting a second marriage pending final disposal of those remedies availed of cannot have the effect of rendering them infructuous, and that where such remedies are provided from an order, the order should be subject to their result of the application to set aside the *ex parte* order or the result in the appeal. *Vellinayagi* v. *Subramaniam*[1], lays down that what is laid down in section 12 (2) (*b*) (*ii*) of the Hindu Marriage Act is a condition subject to which alone a petition for annulling a marriage under section 12 (1) (*d*) could be filed, that it is not a period of limitation and hence compliance with section 12 (2) (*b*) (*ii*) is a condition precedent to the entertainment of a petition under section 12 (1) (*d*) and the Court has no jurisdiction to condone the delay in filing it. *Vira Reddi* v. *Kistamma*[2], makes it clear that the word 'access' in a matrimonial cause signifies an indicia of opportunity for marital intercourse; that like any other physical fact it could be proved by direct or circumstantial evidence; that direct evidence can only be secured through the spouses concerned and such evidence is admissible but should be considered with caution; that as corroboration of such evidence is practically impossible and indeed not required, the surrounding circumstances, an overall picture and the conduct of the parties act as legal accessories to weigh such uncorroborated testimony; and that though a matrimonial proceeding is a civil proceeding, since it involves a disruption of the marital tie law imposes a stricter degree of scrutiny of the evidence if uncorroborated. *Krishnan* v. *Thailambal*[3], states that section 24 of the Hindu Marriage Act contains no limitation that an order for interim maintenance and expenses made thereunder will cease to have force if the husband against whom the order is passed chooses to withdraw the proceedings for nullity of marriage intiated by him; that when the husband chooses to drag the wife to the Court by filing a proceeding and if it is shown that the wife has no independent income, the husband must necessarily provide her with interim maintenance and the necessary expenses and he cannot be allowed to wipe out this liability after the order is passed by choosing to withdraw from the petition and that section 24 applies not merely to the respondent in the main petition but could also be invoked by the petitioner in the main petition itself, whether it be the wife or the husband. In *V.V. Rama Rao* v. *K. Bhaskara Rao*[4], the Supreme Court points out that where there is lapse of a long period of time between an adoption and its being questioned every allowance for the absence of evidence to prove such fact must be favourably entertained and the presumption in its favour is very heavy considering where all the parties to the adoption and all those who could have given evidence in favour of its validity have passed away. *Kannaiyan* v. *Assistant Collector of Central Excise*[5], holds that in the case of a property which was enjoyed by the members of a coparcenary and which they divided among themselves at a partition, there is no transfer of property from the coparcenary as a unit to the individual coparceners who divide it; it is only a case of converting what has been enjoyed by the coparceners with coparcenary rights into property enjoyed by them with separate rights and there is no element of transfer in such a division. *Srinivasa Padayachi* v. *Parvathiammal*[6] decides that it is now settled law that under the Mitakshara School of Hindu Law no coparcener can dispose of his undivided interest in coparcenary property by way of gift and such a transaction will be void *in toto* and will not bind even the donor or his share of the property; that other forms of alienation by a coparcener for consideration will be binding to the extent of his share and the entire transaction will not be void; and that a transfer made in consideration of marriage is an alienation for valuable consideration within the rule of Hindu Law and not a gift and hence such a transaction will be binding on the transferor and his share of the joint family property. *Samiappa Goundar* v. *Sivabalan*[7], makes it clear that an alienation by the father of joint family property without legal necessity is not void but voidable at the option of the other coparceners who may affirm it or repudiate it, the right of repudiation being

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1. (1969) 1 M.L.J. 334.
2. (1969) 1 M.L.J. 366.
3. (1969) 1 M.L.J. 328.
4. (1969) 2 M.L.J. (S.C.) 105.
5. (1969) 2 M.L.J. 277.
6. (1969) 2 M.L.J. 597.
7. (1969) 2 M.L.J. 125.

personal to them and no third party can repudiate it when there is no justification that the alienation was in fraud of creditors ; that to constitute a valid suit for partition the entire estate must be found represented in the parties arrayed in the suit either as plaintiffs or as defendants ; that persons who have no interest in the estate cannot be considered to be necessary parties, though they may in some cases, be proper parties ; that if some of the parties having title in the estate and right to possession are excluded at the partition their interest in each parcel of land would remain as before the partition and there can be no final partition ; that the persons excluded would not be bound by the decree for partition and their tenancy in common would be continued ; and that on the institution of a suit for partition filed by one brother against his other brothers who also claimed partition, there would be disruption in the status of the brothers and in a later suit filed by the sons of one such brother against the alienee for setting aside the sale effected by his father and for partition, the other sons of the other divided brothers would not be necessary parties. *Gopalakrishnan* v. *Balasubramania Chettiar*[1], holds that if the father had decided to sell a property rather than raise money on mortgage the fact that a portion of the consideration had not gone in discharge of debts will not affect the alienation and it is for the father to choose whether the property should be sold and funds raised or other kind of alienation resorted to; that the real question is whether there was any legal necessity for the alienation; that the managing member of a trading family has wider powers than those of a manager of a non-trading family provided the acts done are for the benefit of the family; that acts like incurring debts are necessities to a trading family as credit is the very essence of trade and the existence of business creates the necessity for borrowing and purchasing on credit, that the power therefore of a manager to carry on the family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes of that trade; that in the case of a trading family, those who deal with the manager and to whom he incurs debts are not put upon enquiry as to whether the debts were incurred for the benefit or necessities of the family so long as they are incidental to the family business; and that though the alienee is required to establish legal necessity for the alienation it is not necessary for him to show that every bit of the consideration which was advanced was actually applied for meeting family necessity. *Dharma Udayar* v. *Ramachandra Mudaliar*[2], expresses the view that where a women had lost her husband prior to the Hindu Women's Rights to Property Act and the only right which she had then was a right to be maintained out of the family properties and her brother-in-law and father-in-law who could have contented themselves with making regular money payments and if required charged a certain property for maintenance set apart when partioning the properties between them a property giving her a life estate pure and simple without granting any power of alienation her right being limited to the enjoyment of the income from the property she got only a limited estate and section 14 (1) of the Hindu Succession Act did not operate on the estate and make the widow a full owner.

(To be Continued).

1. (1969) 1 M.L.J. 537.

2. (1969) 1 M.L.J. 184.

EVIDENCE

In *Purushotham Chettiar* v. *Ramanuja Padayachi*[1], it is held that where a document on the basis of which suit is laid has been lost or is not in the possession of the plaintiff, the various clauses of section 65 of the Evidence Act will come into play but even where those conditions do not apply if the condition or the contents of the original have been admitted in writing by the person against whom it is proved or by his representative in interest, secondary evidence could be given about the contents of the document and the admission of the person against whom it is proved can itself be relied upon for holding that the facts so admitted have been proved; that the admission has to be accepted or rejected as a whole, but that applies only to the contents of the document itself and not to matters which are not contained in that document though it might relate to or be connected with the document which is said to have been lost. In *Sriramulu* v. *T. A. Narayana*[2], the Supreme Court states that the fact that a witness is the cousin brother of a party to the suit can be no ground in itself for rejecting his testimony.

LIMITATION.

In *Kamakshi Ammal* v. *Rajaraman*[3], it is pointed out that a person who made second endorsement, more than three years after the date of the document but within three years of an endorsement of part-payment by a co-promissor, must by his conduct be deemed to have ratified the first payment. *Gajendran* v. *Gandiban Bus Service*[4] lays down that the second proviso to section 20 (2) of the Minimum wages Act of 1948 being in substance similar to the provision of section 5 of the Limitation Act, 1908, the party has to satisfy the Court that he had sufficient cause for not preferring the proceeding within the prescribed time, for the whole of the period of the delay; that while it is difficult to define precisely the meaning of the words 'sufficient cause'—and the scope of the expression cannot be crystallised by any rigid definition—the cause pleaded must be relevant and have relation to the delay and when the sufficiency of the cause is made out the length of the delay must not count. In *Pierce Leslie & Co.* v. *Miss Wapshare*[5], the Supreme Court holds that section 10 of the Limitation Act of 1908 is not applicable where the estate conveyed is not vested in the defendant for the specific purpose of making it over to the plaintiff *Varadarajulu Naidu* v. *Papanasam Labour Union*[6], points out that so long as the purpose specifically appears in writing that will satisfy the requirements of section 10 and it is not necessary that the purpose should find an express mention in a formal document, and 'vesting' in the context of section 10 means that the trustee has absolute control over the trust property and it may also imply that the trustee as such is the legal owner of the property which he has to apply for purposes of the trust. *Muthiah Chettiar* v. *Shanmugam Chettiar*[7], expresses the view that section 13 makes no exception for cases in which the cause of action arose in a foreign country or for cases in which the defendant was in a foreign country at the time of the accrual of the cause of action. and, that in all such cases, the time during which the defendant has been absent from India must be excluded in computing the period of limitation. *Mohamed Sali* v. *S. A. Fernando*[8], decides that where two Courts had jurisdiction in respect of a claim and the plaintiff filed his suit in one of them on the last date of limitation, but on the defendant's objection as to juridiction the plaintiff took a return of the plaint for presentation to the other Court by endorsing and re-presented to the other Court after some time after taking return of the plaint, the suit must be deemed to be pending in the first Court till re-presented to the other Court and is not barred by limitation. *Natesa Pillai* v. *Koneri Naicker*[9], holds that where the complaint of the plaintiff was that kist was not payable for the particular fasli by him and that it was payable by another and that the first defendant illegally distrained his two bulls for recovering the kist from him, Article 28, being specified in

1. (1969) 1 M.L.J. 237.
2. (1967) 1 M.L.J. (S.C.) 6.
3. (1969) 1 M.L.J. 454.
4. (1969) 2 M.L.J. 392.
5. (1969) 2 M.L.J. (S.C.) 80.
6. (1969) 1 M.L.J. 102.
7. (1969) 2 M.L.J. (S.C.) 28.
8. (1969) 1 M.L.J. 415.
9. (1969) 1 M.L.J. 405.

relation to the cause of action of the plaintiff, applies. *Union of India* v. *Seyadu Beedi Co.*[1] lays down that it would not be reasonable to construe the time from which limitation commences to run under Article 30 as the actual date of the loss or injury and it is on account of this fact that the Courts rely on the date on which the carrier of the goods after coming to know of the loss or injury to the goods conveys the information to the consignor as the starting point for limitation. *Natesan Pillai* v. *Rathnam Pillai*[2], points out that the Article applicable in the case of a promissory note payable on demand and not accompanied by any writing postponing the right to sue is Article 73, that Article is not applicable when the promissory note is accompanied by writing postponing the right to sue and as there is no other Article providing for the case Article 80 will apply that the period of limitation available under Article 80 is three years from the date when the promissory note ' becomes payable ' and that the principle applied in the case of Article 132 in construing the words ' becomes due,' namely, that the payee cannot be compelled to take advantage of the forfeiture clause so as to make limitation run against him is equally applicable to Article 80. *Kanakaraj* v. *Sundararaja Iyer*[3], takes the view that Article 105 would govern every case of a suit by a quondam mortgagor against the quondam mortgagee including suits for the rendition of accounts under section 76 (1) of the Transfer of Property Act and that, even assuming that the possession of the mortgagee after tender and deposit of the mortgage money should be treated as that of a trespasser, Article 109 being the general Article will not apply in the case of a special particular situation specifically provided for under Article 105 of the Limitation Act. In *Pierce Leslie & Co.* v. *Miss Wapshare*[4], the Supreme Court states that where the plaint claims only declaratory reliefs, a decree vesting or re-transferring certain properties to a certain body of plainitffs and directing accounts, the suit is governed by Article 120. *Badrabahu Nainar* v. *Devendra Nainar*[5], points out that whether a sale has become absolute or not depends upon whether any legal proceeding intimately connected with it is still pending as to create a cloud of doubt about its finality, that such a legal proceeding must have a nexus to the original one relating to the sale of the immoveable property in execution, and therefore the crucial test to ascertain whether the sale has become absolute is to see whether there are any contemporaneous proceedings taken by any party to the suit questioning the sale or to postpone it or avoid it and, if any such perceptible connection is there between such a pending proceeding and the sale itself, then it can reasonably be be presumed that the finality in the Court sale has not yet been reached. *Kariyan Chettiar* v. *Rangiah Gounder*[6], makes it clear that, where the trustee who has alienated kattalai properties is still alive and he has not left the village or resigned or been replaced by some other trustee appointed by the Religious Endowments Board or *de facto* trustee who has taken over the performance of the trustee's duties, it cannot be held that the alienor trustee has been removed from the trusteeship or that he has resigned and therefore Article 134-B could have no application as none of the contingencies contemplated by that Article has taken place. *Doraiswami Nadar* v *Vinayaka Ratnaswami Nadar*[7], lays down that in a partition suit any number of applications for the passing of the final decree in parts are permissible, and where the Court of the Subordinate Judge had itself passed the preliminary decree it was entirely beyond its powers to dismiss the suit which would have the effect of nullifying the preliminary decree. In *Pierce Leslie & Co.* v. *Miss Wapshare*[4], the Supreme Court holds that the right of the Government (State) to take as *bona vacantia* for want of a rightful owner has been recognised in India for a very long time [(since 16 and 17 Victoria C. 95, section 27)]; that section 54 of the Government of India Act 1858, section 20 (3) (*n*) of the Government of India Act, 1915, section 174 of the Government of India Act, 1935 and Article 296 of the Constitution of India provide for taking over by Government or State of property as *bona vacantia* for want of a rightful owner; that consequently the properties of a company dissolved under the

1. (1969) 1 M.L.J. 514.
2. (1969) 1 M.L.J. 82.
3. (1969) 1 M.L.J. 456.
4. (1969) 2 M.L.J. (S.C.) 80.
5. (1969) 2 M.L.J. 163.
6. (1969) 1 M.L.J. 340.
7. (1969) 1 M.L.J. 392.

Companies Act, 1913, passes to the Government (State) as *bona vacantia* except in so far as that right is cut down by that Act.

CIVIL PROCEDURE CODE.

In *Chandrasekharan Pillai* v. *Muthu Bogi*[1], it is pointed out that where a suit is filed by some worshippers of a temple to establish the right of the temple itself to the suit property it is not as if the plaintiffs are seeking any remedy for themselves to the exclusion of others in the village or the community to which the temple belongs; that such a suit for declaration of title of the temple to certain properties is maintainable although it is filed only by some persons belonging to a section of the community and the suit is in reality on behalf of the trust and the worshippers must be deemed to be suing in the right of the trustees; that in such a suit the relief of possession could also be granted in favour of the worshippers as even a worshipper of a temple is entitled to take steps to regain possession of the trust property in the possession of a trespasser, if the lawful trustee has not taken any steps in that regard; but the decree for possession granted in favour of the worshippers is neither in their individual rights nor in their capacity as representing any particular group or community to the exclusion of others having equal rights, and it will be open to the lawful trustee to take possession from them at any time. In *Ganapathi Thevar* v. *Navaneethaswaraswami Devasthanam*,[2] the Supreme Court makes it clear that where the High Court has specifically gone into the applellant's claim to occupancy right and after examining the relevant provisions of the concerned statute and the decisions bearing on the point held the appellant's claim to be untenable and remanded the case to the trial Court for the trial of other issues not decided earlier, the trial Court as well as the Bench that heard the appeal were bound by the decision, but the decision of the High Court does not preclude the appellant from reagitating in the Supreme Court the plea that he had occupancy right in the suit properties. *Kathoon Bivi Ammal* v. *Arulappa Nadar*[3], decides that where two suits were tried together by consent, the issues raised a common question, the evidence was the same, the decision in one suit followed the decision in the other suit, the effect of the appeal in one suit was in substance to get rid of the common decision, the fact that an appeal was filed only against the decree in one suit, but not against the decree in the other suit does not mean that the decree in the suit not appealed against became *res judicata*. *Srinivasamurthy Mandiram* v. *Vaduvambal*[4], holds that the doctrine of *res judicata* covers an adjudication both on factual as well as on legal matters; that a different view of the law has been subsequently taken will not affect the applicability of the doctrine; that there is nothing in the scheme of the Madras City Tenants Protection Act of 1921 which bars the application of the doctrine of *res judicata* to an order under section 9 thereof; and though it may be that when the landlord files a second suit for ejectment the tenant would have the right of filing an application under section 9 the proceedings in that application would be governed by the principle of *res judicata*. *Kamatchi Ammal* v. *Athigamudaya Pillai*[5], lays down that, if the plaintiff whose suit has abated cannot again bring a fresh suit on the same cause of action and the earlier decision should be deemed to be a decision against him, he cannot get rid of the effect of the earlier decision just because he happens to be a defendant in a subsequent suit, and that even in the subsequent suit where he is a defendant it should be held that he would be barred from agitating the same questions which he could have agitated in the earlier suit and which because of the provisions of Order 22, rule 9 of the Civil Procedure Code he is prohibited from agitating against in a subsequent suit as a plaintiff. *Marisami* v. *Bluemount S. Associates (P.) Ltd.*[6], points out that a plea of *res judicata* does not involve a pure question of fact and it involves a mixed question of fact and law and consequently the factual foundation for raising the plea of law must have been laid in the pleadings and in the issues; and that for the applicability of section 11 and for invoking the bar of *res judicata* it must be established that the matter which is directly and substantially in issue in the present suit has beeen directly

1. (1969) 2 M.L.J. 643.
2. (1969) 2 M.L.J. (S.C.) 31.
3. (1969) 1 M.L.J. 241.
4. (1969) 1 M.L.J. 407.
5. (1969) 1 M.L.J. 440.
6. (1969) 1 M.L.J. 573.

and substantially in issue in the former suit. *Kamakshi Ammal* v. *Chockalinga Thevar*[1] expresses the view that while it is true that the doctrine of constructive *res judicata* is applicable to execution proceedings, the Court should be cautious in its application and a Court before it bars a party by the principle of constructive *res judicata* must satisfy itself that the party had notice of the point which was likely to be decided against him. *Minor Dorairaj* v. *Karuppiah Ambalam*[2], holds that it is permissible to bring a suit for accounts of a dissolved partnership at the place where the defendant resides even though some of the assets may be in the shape of immovable properties situate outisde India, where there is no dispute about title. *Paramasivam Pillai* v. *Sornathammal*[3], decides that where the question in the case was one of considerable difficulty and there was no decision of the High Court on the point, the order of the lower appellate Court that both parties should bear their own costs will not be disturbed. *Union of India* v. *Seyadu Beedi Co.*[4], expresses the view that where the appellant succeeded only on the ground of limitation the parties may be ordered to bear their respective costs in both the Courts. *Gopala Konar* v. *Subramania Asari*[5], points out that if a party's name is struck off the record, he no loonger remains a party and section 47 of the Civil Procedure Code will not apply, but if his name is struck off and he is only exonerated from the suit, the question whether he continues to be a party for the purposes of section 47 would depend on the circumstances in which he was impleaded in the suit; that where a party ought not to have been impleaded at all but still had been impleaded and was subsequently exonerated, the duty of the Court was to strike off his name from the record, and if instead of adopting the correct procedure, the Court merely exonerated him, it would not matter and his name must be deemed to have been struck off the record; but where a claim was made against a party on some basis, but the plaintiff abandoned his claim and against that party and the party was exonerated, the party would still be a defendant in the suit for the purpose of section 47 of the Code. *Paramanayagam Asari* v. *R.S. Naidu*[6], states that the contention that the executing Court could go behind the cause title is totally inadmissible and the decree is executable against the assets of any person whose identity fits in with the name and *alias*, father's name and address given in the cause title; that if a person really desires to claim that he is a third party, and hence not liable under the decree, his true remedy is to file a declaratory suit for the purpose under the common law and he cannot claim that the executing Court should not follow the procedure made incumbent on it under Order 21 or that it should go behind the decree and canvass the correctness of the cause title. *Venkatasami Naidu* v. *Sornammal*[7], makes it clear that the question whether the property attached in execution of a money decree is one that could be proceeded against as belonging to the judgment-debtor or not is a matter relating to execution within the meaning of section 47, of the Civil Procedure Code; that where the legal representative of a deceased judgment-debtor is brought on record in execution of a decree and property is sought to be sold as the prperty of the judgment-debtor, it is the duty of the legal-representative to set up personal title, if any, in himself to the property and have the matter adjudicated in execution; that it is not open to the legal representative of the judgment-debtor to allow the property to be sold as belonging to the judgment-debtor and later file an independent suit setting up title in himself and contend that the property was not liable to be proceeded against in execution, as is apparent from the scheme of sections 50 and 52 and Order 21, rule 22; that the *Explanation* to section 47 added by the Amendment Act LXVI of 1956 shows that even a purchaser at a sale in execution of a decree is deemed to be a party to the suit; that the intention of the Legislature in enacting the several provisions relating to execution is to provide a complete and effective machinery by which the auction-purchaser at an execution sale could obtain an absolute and conclusive title to the property sold in a simple and speedy manner; that all objections to execution sales should be disposed of as cheaply and speedily as possible and this is a bar to such matters being agitated in separate suits and the bar is absolute whether it is on the basis of estoppel, *res*

1. (1969) 2 M.L.J. 593.
2. (1969) 1 M.L.J. 348.
3. (1969) 1 M.L.J. 197.
4. (1969) 1 M.L.J. 514.
5. (1969) 1 M.L.J. 326.
6. (1969) 2 M.L.J. 271.
7. (1969) 2 M.L.J. 609.

judicata or statutory bar under section 47; hence, if a person during the course of execution proceedings does not raise an objection to the sale of certain properties which if raised would have prevented the property from being sold, he will be debarred by the principle of constructive *res judicata* from raising that objection at a subsequent stage and the principle will be as well applicable to claims by the legal representatives of a deceased debtor. *Krishna Rao* v. *Timurshakhan*[1], lays down that bonus to a labourer forms part of wages and therefore is not liable to be attached. *Rangaswami* v. *Krishnan*[2], expresses the view that section 66 does not prohibit *benami* transactions which have always been recognised in this country and the bar under the section is limited to cases where the suit is brought against the certified purchaser or his representatives, that there is nothing in the section to forbid the recognition of the real owner's title by the benami Court auction purchaser or his heirs, and that in such cases a release deed executed by the Court auction purchaser in favour of the real owner or his heirs might well be construed as a deed of transfer or conveyance sufficient to vest the title in the true owner. *Coimbatore District C.C.S. & Marketing Society* v. *Union of India*[3], states that though section 80 of the Civil Procedure Code should be strictly construed the terms of the notice however should not be scrutinised in a pedantic manner or in a manner completely divorced from common sense, and that where in the written statement filed by the defendant no objection was taken with regard to the validity of the notice there is justification for the inference that the defendant had waived the objection, even if there was any defect in the notice. *Murugayya Angarar* v. *Nataraja Iyer*[4], points out that so long as the Courts below had some material, however inadequate, in regard to a concurrent finding, it is not for the High Court in second appeal to interfere with the same. *Soosai Arulan* v. *Irudayammal*[5], states that under section 105 (2) where a person aggrieved by an order of remand fails to appeal against such an order he cannot be heard to object to the propriety or correctness of the order or the findings on which it is based in the subsequent stages of the litigation. *Joseph* v. *Varadarajan*[6], holds that the interdict against the maintainability of a Civil Revision Petition under section 115 of the Civil Procedure Code is only in cases where there is a provision for appeal to the High Court against the impugned order; that the availability of a remedy by way of an appeal to the District Court or any other subordinate Court is not a general bar to the entertainability of an application for revision; that where the earlier order was a self-contained order which can act on its own vigour and force and the order did not constitute a formal expression of adjudication which can be said to have conclusively determined the rights of parties to the action with regard to any matter in controversy in the suit, the order challenged cannot be deemed to be a decree as defined in the Code; and though the later order rejecting the plaint is in the nature of a decree since it flows from the former order requiring the petitioner to pay additional Court fee which has an independent facet of its own and therefore susceptible to the visitorial jurisdiction of the High Court under section 115, the fact that at the inception a regular suit was filed does not matter. *Syed Hanifa* v. *Muhammad-Khalifulla*[7], decides that an order of the Rent Controller holding that he was competent to act under section 476 of the Criminal Procedure Code and lay a complaint is not subject to revision by the High Court under section 115 of the Civil Procedure Code as the Rent Controller is not a civil Court. *Samiappa Gounder* v. *Sivabalan*[8], lays down that when a plea is put forward that a suit has to fail for non-joinder of necessary parties it would be for the defendant who sets up the plea to make out that the parties not impleaded are necessary parties and that their non-joinder would be fatal to the suit. *Pachaiammal* v. *Thirugnanasambandam*[9], states that where a Court dismisses an application for execution and allows the attachment to continue, the position is not the same as where the petition is dismissed and nothing more is said. *D. Sornam* v. *State of Madras*[10], points out that Order 3 of the Code no doubt

1. (1969) 2 M.L.J. 241.
2. (1969) 1 M.L.J. 173.
3. (1969) 2 M.L.J. 602.
4. (1969) 1 M.L.J. 503
5. (1969) 1 M.L.J. 64.
6. (1969) 2 M.L.J. 234.
7. (1969) 1 M.L.J. 413.
8. (1969) 2 M.L.J. 125.
9. (1969) 1 M.L.J. 277.
10. (1969) 1 M.L.J. 207.

provides for conduct of litigation in Courts by recognised agents; but it is now settled that an appearance, application or act which a recognised agent may make or do for a party does not include the right to plead and that a recognised agent of a suitor in any proceeding before Courts as such has no right of audience and cannot plead in Court. *Chinnaswami Naicker* v. *Kandasami Gounder*[1], makes it clear that though amendment of pleading should be freely allowed at whatever stage it is asked for this can only be subject to pleas as to limitation or other prejudice to the other party and that in the absence of an enabling provision, if on the date the application for amendment was made the suit would have been barred by limitation there is no escape but that the aplication has to be dismissed on the ground of limitation. *Krishnaswamy* v. *Rangaswamy Gounder*[2], holds that it is not an invariable rule that the Court could not allow an amendment which would deprive the defendant of the valuable right of limitation, and the Court may in appropriate cases allow the necessary amendment. *Allauddin* v. *Lakshminarayanan*[3], decides that where in a suit for a permaenent injunction restraining the defendant from interfering with his possession the plaintiff filed an application for amendment seeking to add a prayer for recovery of possession and the application was dismissed on the ground that if the amendment was allowed it would render the suit beyond the Court's pecuniary jurisdiction, the right course to adopt is to allow the amendment, grant an opportunity to the plaintiff to pay the Court fee, and if there is any question about pecuniary jurisdiction arising examine the matter and, if necessary, in the light of report to be called for from a Commissioner and on a definite finding on the question to decide whether the plaint should be retained or will have to be returned to the plaintiff as one in excess of the pecuniary jurisdiction of the Court. *Purushotham Chettiar* v. *Ramanuja Padayachi*[4], states that there is no rule of law that if a plaintiff, who has a document in his possession does not produce it, the suit is necessarily to be dismissed and the provision regarding the consequence of non-production by the plaintiff of a document in his possession as required under Order 7, rule 14, is provided in Order 7, rule 18. *Minor Doraraj* v. *Karuppiah Ambalam*[5], holds that where the written statement did not specifically traverse the allegation about the defendant's absence from India during stated periods, under Order 8, rules 3 to 5 the defendant must be deemed to have accepted the periods of his absence. *Parasmal Chordia* v. *Rajalakshmi Ammal*[6], lays down that all that is necessary for the application of third party procedure is whether if the plaint claim is allowed the defendant has a claim, in that event, for indemnity, by reason of such claim being allowed, from a third party; if that requirement is satisfied, the Court will not be justified, on any extraneous ground, from refusing third party procedure; that there is nothing in the rule suggesting that third party procedure has no application to suits on negotiable instruments; that there is no limitation that the rule is applicable only to a claim of indemnity arising out of the same transaction or a transaction entered into simultaneously with the transaction sought to be enforced in the suit; and that rule 3 of Order 8-A does not limit the scope of rule 1 so as to make it applicable only to cases where the suit claim is admitted. *Marudha Pillai* v. *Venkatarama Iyer*[7], expresses the view that where in a suit for arrears of rent the defendant pleaded that he had paid the same to the plaintiff's brother and filed an application under Order 8-A to implead him as a defendant he was entitled to an order under Order 8-A since the plaintiff's brother, if he had received the money promising to pay it to the plaintiff, is in equity obliged to indemnify the defendant. *David Raja* v. *Devaraj*[8], makes it clear that if the trial Court has failed to frame an issue called for on the pleadings and the appellate Court ignored the purport of the same, it is but fair and just to hold that the parties ought to be given their legitimate reliefs; that the by-passing of the essential aspects of a pleading, when ordinarily it is the duty of Courts to frame issues, without focussing its attention to the points to be determined in the action, ought not to be basis for negativing the normal reliefs to which the parties to a

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1. (1969) 1 M.L.J. 393.
2. (1969) 2 M.L.J. 412.
3. (1969) 2 M.L.J. 239.
4. (1969) 1 M.L.J. 237.
5. (1969) 1 M.L.J. 348.
6. (1969) 1 M.L.J. 168.
7. (1969) 2 M.L.J. 16.
8. (1969) 1 M.L.J. 623.

suit were entitled to ; and that by granting such a relief, the Court would have acted justly, equitably and conscientiously and obviated the necessity of an unnecessary suit with all its risks. *Nallammal* v. *Marimuthu Boyan*[1], points out that while the machinery and remedy provided under Order 21, rule 32 (1) would cover cases of both prohibitory and mandatory injunctions sub-rule (5) would apply only to cases of mandatory injunction ; that it would not apply to a prohibitory injunction restraining the judgment-debtor from interfering with the plaintiff's right of way ; that the remedy provided under sub-rule (1) of detention in civil prison or attachment of property would be effective in normal cases, and if it proves to be ineffective the decree-holder will have to file a fresh suit for the removal of the obstruction ; that in execution of a decree granting a prohibitory injunction the Court cannot give any direction to the decree-holder to apply for removal of obstruction or have any positive act done at the cost of the judgment-debtor ; and that the only remedy of the holder of a decree granting a prohibitory injunction is to resort to Order 21, rule 32 (1) and not sub-rule (5). *Varadarajulu Naidu* v. *Inthirani Ammal*[2], states that the effect of an attachment before judgment followed by a re-attachment after judgment would be that the former merges in the latter and that in such a case a second claim petition would be competent notwithstanding the fact that an earlier claim petition preferred immediately after the earlier attachment had been dismissed. *Mrs. Kamalam Paul* v. *Rama Rao*[3], lays down that no auction can be held without an upset price being fixed ; that in fixing the upset price the Court need not give elaborate reasons ; and that notwithstanding that the upset price is fixed at a certain figure there is no objection to any purchaser buying the property for the value given by the judgment-debtor or even more *Ramaswami Naidu* v. *Margabandu Mandri*[4], holds that on the issue of a sale certificate to the purchaser in Court auction in execution of a mortgage decree, under Order 21, rule 94, his title becomes perfected and complete and his right to possession unimpeachable against the parties to the suit as well as those claiming under them, so much so he cannot be resisted by a purchaser from the mortgagor as an independent claimant merely because he has been exonerated in the suit. *Velappan Pillai* v. *Parappan Panickar*[5], rules that Order 22, rule 4 (4) enables the Court to exempt the plaintiff whenever it sees fit from substituting the legal representatives of a deceased defendant who had been declared *ex parte* and the provision could be availed of at any time before judgment ; that while broadly stated in a suit by a puisne mortgagee against the prior mortgagee the original mortgagor could be a necessary party and will be at any rate a proper party there may be cases where he may be considered to be a wholly *pro forma* party having no interest in the result of the litigation ; that if a person is a *pro forma* respondent, having no interest in the litigation, the rule providing for abatement cannot apply; and that reading rule 4 (1) with rule 9 it is clear that there is no question of any abatement in the case of a purely *pro forma* respondent. *Mohammed Zackriah Sahib* v. *Chinnappan*[6], decides that an arbitration award obtained during the pendency of a suit with regard to the subject-matter of the suit on the initiative of the parties without reference from the Court or to the Court cannot without more be recognised by the Court as a compromise or adjustment of the suit for passing a decree thereon under Order 23, rule 3, but if after such an award is made the parties agree to accept it that will be a compromise and a decree can be based thereon. *Sivasankara Mehta* v. *M/s. B.A. Bankers*[7], states that the effect of Order 38, rule 11 is to lay down when there is an attachment before judgment, and subsequently a decree is passed making the attachment absolute and if thereafter an execution petition is filed for executing the decree the anterior attachment can be relied upon for the purpose of realising the amount of the decree by sale of the property without a fresh attachment, and that no question of any deeming provision arises in such cases. *Achammal* v. *Krishna Naidu*[8], points out that under Order 41, rule 23 before the suit

1. (1969) 2 M.L.J. 482.
2. (1969) 1 M.L.J. 386.
3. (1969) 1 M.L.J. 344.
4. (1969) 2 M.L.J. 274.
5. (1969) 1 M.L.J. 528.
6. (1969) 2 M.L.J. 649.
7. (1969) 1 M.L.J. 568.
8. (1969) 1 M.L.J. 126 ; *see also Narayanaswami Asari* v. *State of Madras*, (1969) 1 M.L.J. 411.

could be remanded to the trial Court, it is necessary for the appellate Court to find that the decree of the trial Court should be set aside. *Kaluvaraya Pillai* v. *Ganesa Pandithan*[1], makes it clear that in appeals against orders of remand under Order 41, rule 23 the Court which has seisin of such an appeal can probe into the legality, propriety and regularity of the facts and circumstancs attendant on and revolving upon the order of remand as such but cannot enter into or delve deep into a discussion regarding the findings which are unconnected with and alien to the order of remand. *Venkataswamy Naidu* v. *Parasaram Naraindas*[2], lays down that where a decree is made by the appellate Court (Supreme Court in the instant case) confirming the remit order of the first appellate Court, and at the appellate stage a new statute (Madras Act XIII of 1960) affecting the rights of parties came into force but the appellate decree took no notice of it, it would not be open to the trial Court, to reopen the matter in order to give effect to the new statute.

(*to be continued.*)

1. (1969) 2 M.L.J. 431.

2. (1969) 2 M.L.J. 490.

RECENT RETIREMENTS IN THE HIGH COURT.

Two of the Judges of our High Court have recently retired—Justice P. Ramakrishnan and Justice M. Natesan. The former came to the High Court from the ranks of the Indian Civil Service and is the last but one of them on the Bench of the Madras High Court. Justice Natesan, on the other hand came to the Bench straight from the Bar after a period of very active practice. There is no doubt that each of the Judges in his own way gave of his best as a Judge.

In the pre-Constitution days there used to be a measure of prejudice and criticism against the promotion of members of the Indian Civil Service to the High Court, because, generally they were not sons of the soil and were prone to regard themselves as a superior class of persons, stiff and supercilious, with mentality characteristic of the ruling race. Conditions have changed since then and so also the outlook. We have had some good civilian Judges like Justice Rajagopalan, Justice Balakrishna Aiyar, and more recently Justice K. Srinivasan. Justice Ramakrishnan was a conscientious Judge marked by great sincerity of purpose and poise. In criminal cases he showed a lenient and humane approach. His work was methodical and he listened with patience and courtesy.

Justice Natesan has been on the Bench for only six years, a relatively short tenure. His judgments display great learning and luminous exposition. He has been equally at home in all branches of the law, whether the question before him was one of constitutional law, or of personal law or of mercantile law or the law of procedure. He has stated that he intends to practise before the Supreme Court. Since the passing away of Sri A. V. Viswanatha Sastri there is practically none from the Madras Bar in the front ranks of the Supreme Court practitioners. It is to be hoped that Sri Natesan will achieve a commanding position in the Supreme Court Bar and sustain the reputation which Madras lawyers have won for themselves.

The retirement of the two Judges leaves the High Court distinctly the poorer. They are bound to be missed for quite a long time.

PENAL CODE.

In *Baba Rao*, In re[1], it is held that as section 99 of the Penal Code restricts the right of private defence as against public servants only to cases where there is a reasonable apprehension of death or grievous hurt, a citizen will have no right to assault a public servant entering his premises even though the acts of such public servant may not be strictly justifiable in law. *Rangaswamy*, In re.,[2] holds that section 100 of the Penal Code will not cover a case where the accused stabbed the deceased to escape from his hold, on the deceased directing that he should be tied and held for being taken to the police station. *Chelladurai*, In re.[3], makes it clear that the term 'reward' in section 161 denotes a payment for a past service and any amount received for past services rendered by a public servant will come within the mischief of the section. *Kulandaivelu*, In re.[4], points out that section 224 deals with two distinct offences, that so far as the first part of the section is concerned unless it is proved that the resistance or illegal obstruction offered is intentional the offence under that part is not made out; that the second part of the section does not make intention the gist of the offence of escaping from custody; that wherever a person is, after he has been lawfully detained, he is deemed to be under custody, and the lawful custody of the person does not cease the moment he is taken away by force by some one else and continues wherever he goes by whatever means; that the custody cannot be narrowed down to physical custody but refers to legal custody, and that a person who had been lawfully detained cannot gain his liberty by other means excepting by due course of law. *Ganapathy* v. *Superintending Engineer*[5], takes the view that even from the point of view of the moral turpitude test the contravention of section 294-A does not stand on the same footing as technical offences like contravention of traffic regulations or the licensing regulations which no sensible person will take into account for imposing a departmental punishment and that conduct of an unlicensed lottery appears to be a more serious type of offence than such petty contraventions and a subordinate who takes the risk by participating in an illegal lottery, must be considered to have committed a much graver offence. *Chinnapaiyan*, In re.[6], states that it is difficult to see how even assuming that a child of 5 years spat on the appellant or showed its legs it would constitute provocation and much less grave provocation to sustain the plea of grave and sudden provocation under Exception 1 to section 300. *Public Prosecutor* v. *Ayyanar*[7], holds that death resulting from practically severing the leg of the victim even if it was done with the intention of chopping it off is an offence that would fall under clause 3 of section 300 and not under the latter part of section 304. *Kannan*, In re[8], expresses the view that where the accused caused grievous hurt to his wife with a knife and one of the cuts fell on the child which was on her hip and caused its death there is no scope for invoking section 301 embodying the principle of transfer of malice to convict the accused under section 302 and the appellant could properly be convicted for the stab injury caused to the child only under section 326. *Sundaram Pillai*, In re.[9], takes the view that before a conviction can be had under section 304-A, a very high degree of rashness or neglignence must be found, rashness or negligence which must amount to recklessness or utter indifference to consequences and not merely negligence in civil law. *Shanmugasundara Nadar* v. *Sadasivam*[10], points out that the gravamen of the charge under section 420 is the delivery of property in consequence of the inducement made by false representation by the party who obtained the property, and where a person is convicted of a particular charge, on appeal, such conviction can be altered to another if the fact warrant, but that can be done only if material prejudice is not caused to the accused.

CRIMINAL PROCEDURE CODE.

Sigamani v. *Vidyasagaran*[11], makes it clear that an Assistant Public Prosecutor is a full time Government servant and during his period of service his practice as an

1. (1969) 1 M.L.J. 88.
2. (1969) 1 M.L.J. 452.
3. (1969) 1 M.L.J. 508.
4. (1969) 1 M.L.J. 92.
5. (1969) 2 M.L.J. 202.
6. (1969) 1 M.L.J. 511.
7. (1969) 2 M.L.J. 453.
8. (1969) 2 M.L.J. 109.
9. (1969) 2 M.L.J. 464.
10. (1969) 1 M.L.J. 610.
11. (1969) 1 M.L.J. 99.

'Advocate' is suspended and hence he cannot appear for any person in any case as a practising Advocate; he cannot appear for an accused in a private case even though he is authorised by the Collector or the Commissioner of Police; but under clause (2) of section 4 (1) (r) of the Code of Criminal Procedure even an Assistant Public Prosecutor can appear in any case if the Court before whom he seeks permission to act in any specific proceedings gives such permission; a Court should not be persuaded to grant such permission merely because Assistant Public Prosecutors are generally authorised by Government to appear is private cases but it must apply its own mind to each individual case taking all the circumstances of the case into account and give reasons where it grants permission. *Mannadha Goundar* v. *Marappa Goundar*[1], lays down that it is necessary under section 145 (1) that the Magistrate having jurisdiction shall make an order in writing that he is satisfied either from a police report or other information that a dispute likely to cause a breach of the peace exists and state the grounds of his satisfaction before requiring the parties concerned in such dispute to attend his Court and put in written statements and the provision of making the order in writing and stating the grounds of his satisfaction are mandatory. *Ellappa Goundar* v. *Govindaraja Gounder*[2], points out that section 147 (1-A) makes it clear that the Magistrate can receive evidence and act upon it, whereas section 145 (1) provides for filing of affidavits; and while under section 145 (4) the Magistrate can peruse the affidavits, section 147 (1-A) does not give power to the Magistrate to receive affidavits and consider them. *Kasinathan*, In re[3], expresses the view that the relationship between the person who tendered the pardon and the person who accepted it on condition is that of contractual relationship; that before the performance of the contractual promise, it will be open for the person who accepts the pardon to resile and refuse to accept the pardon; that before he was put in the box to give evidence, which is the stage for him to make up his mind to give evidence, he could refuse to give evidence in which case he could be transposed as accused and tried along with the other accused, and that in such a case there is no impediment to release him on bail since the mandatory provisions of section 337 (3) applies only to an approver. *Mohamed Hanifa* v. *Mariam Bi*[4], lays down that the proviso to section 488 (3) governs the whole of section 488 and a wife refusing to live with her husband on account of his contracting a second marriage can claim maintenance under section 488 (1) and she need not prove neglect or refusal to maintain on the part of the husband and there is no warrant for restricting the scope of the second proviso to section 488 (3) as applicable only to parties governed by the law of monogamy.

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1. (1969) 1 M.L.J. 37.
2. (1969) 1 M.L.J. 585.
3. (1969) 2 M.L.J. 458.
4. (1969) 1 M.L.J. 97.